

MASS. SEL.2: IN 8/2 ✓

# AN INTRODUCTION TO THE

## CONFLICT OF INTEREST LAW

FOR THE PRIVATE SECTOR

GOVERNMENT DOCUMENTS  
COLLECTION



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# **CONFLICT OF INTEREST**

The Conflict of Interest Law, G.L. c. 268A, is one of several laws that govern your dealings with public officials and employees. Below are some of the general rules that you must follow. You could face civil and criminal penalties if you take a prohibited action. There *are* some exemptions to these rules, so you may wish to seek legal advice from the State Ethics Commission regarding how the law would apply in a particular situation.

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## **BRIBERY**

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**You may not offer or give anything to a public official in exchange for that official agreeing to perform or not perform an official act.** This prohibition applies to *all* offers and gifts, regardless of their value. You also may not give, offer or promise anything to a public employee (or prospective public employee) with the intent to influence an official act, or to persuade the employee to commit, collude in or allow a fraud. (G.L. c. 268A, §2.)

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## **REGISTERED EXECUTIVE AND LEGISLATIVE AGENTS**

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If your job involves interaction with the state Legislature, the Executive branch, or independent authorities, you should contact the Secretary of State's Office regarding whether you are required to register as an Executive or Legislative Agent. **Registered Agents may not give anything to a public official or policy-making public employee, or to an immediate family member of a public official or policy-making public employee.** This prohibition applies to meals, drinks, entertainment, and all other types of offers or gifts, regardless of their value. [Acts of 1994, Ch. 43.]

## **GIFTS AND GRATUITIES**

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**Even if you are not a Registered Agent, you may not give a public official or *any* public employee anything "of substantial value" for or because of the official's duties. [G.L. c. 268A, §3(a).]**

- Gifts that are worth \$50 or more are considered to be "of substantial value", and are therefore prohibited.
- This restriction applies to meals, drinks, entertainment, discounts, free educational conferences, waived event admission costs, travel reimbursements, gifts of appreciation, retirement presents, and all other forms of gratuities that are given to public officials. Honoraria for speeches may be given to state legislators, but *not* to appointed officials or employees.
- If more than one gift is given to a public employee, the value of all gratuities may be aggregated to reach the "substantial value" threshold.
- The value of gifts given to immediate family members of a public employee may, in certain circumstances, be attributed to the public employee.
- "Standing offers" (e.g., "call me anytime you want to go to a game") are almost always considered to be "of substantial value", even if the cost of a single event is less than \$50, because the public employee could accept the offer more than once.
- You may generally pay for travel and limited other expenses incurred by a public employee in connection with a "legitimate speaking engagement". Contact the Legal Division of the State Ethics Commission for more information about this exemption.
- You may pay for travel, meals and other costs for state executive branch employees who utilize the "Travel and Participation in Training Sessions where Private Entities Provide Financing" process described in 801 CMR 7.00. Note that this process requires advance approval by the state employee's Agency Head and Cabinet Secretary.

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## **HIRING PUBLIC EMPLOYEES**

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Except in rare instances, you may *not* pay or otherwise compensate a public employee in connection with any matter that is "of direct and substantial interest" to their public employer. [G.L. c. 268A, §§ 4(b), 11(b) and 17(b).]

Types of matters that are considered "of direct and substantial interest" to the Commonwealth (or, in the case of a county or municipal employee, the relevant public employer) include: any matter pending before, under the official jurisdiction of, or involving action by an agency, board, commission or department of the public employer; any effort to change regulations, policies or procedures; and any contract, court case, or other legal matter to which the public employer is a party.

You *may* pay "special" state, county and municipal employees in connection with matters of interest to their public employers, if they have not personally participated in the matters, and the matters are not under their official jurisdiction. Also, special exemptions apply to state legislators; contact the Ethics Commission for more information.

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## **HIRING FORMER PUBLIC EMPLOYEES**

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Former public employees and their business partners may *never* accept pay or other forms of compensation in connection with matters in which they participated as public employees. Also, even if they did not personally participate in the matters, there is a one-year "cooling-off" period before former public officials may personally appear before government agencies in connection with matters that had been under their official responsibility. [G.L. c. 268A, §§ 5, 12 and 18.]

Special prohibitions apply to former state employees who worked on privatization contracts; contact the State Ethics Commission for more information.

*"Whenever you do a thing...ask yourself how you would act were all the world looking at you, and act accordingly."*

— Thomas Jefferson

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